

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

IA No. GA/5/2023
In CS/271/1976
JALAN DISTRIBUTORS AND ANR
Vs
PROMODE KUMAR JALAN AND ORS

IA No. GA/6/2023
In CS/271/1976
JALAN DISTRIBUTORS
Vs
PROMODE KUMAR JALAN

BEFORE:

The Hon'ble JUSTICE SUGATO MAJUMDAR

Date: 4th January, 2024

Appearance:

Mr. Rishabh Karnani, Adv.
Mr. Anurag Bagaria, Adv.

...for Plaintiff no.1

Ms. Noelle Banerjee, Adv.
Mr. Abhidepta Tarafdar, Adv.
Mr. Depak Dey, Adv.

...for Defendant no. 5C

Mr. Soorjya Ganguli, Adv.
Ms. Debomita Sadhu, Adv.

...for Defendant no. 6(b)

The Court: GA No. 6 of 2023 is filed by the Petitioner praying for condonation of delay, setting aside abatement of suit on death of the Plaintiff no. 2, substitution of the Petitioner as legal heir of the deceased Plaintiff no. 2 along with other prayers consequent to such substitution.

Parties have exchanged their affidavits.

It is submitted by the Learned Counsel that the present Petitioner is one of the partners of the firm and is nominated to represent the firm. He explained delay with sufficient reasons in terms of the pleadings and submitted that abatement may be set aside condoning delay.

The Learned Counsel Ms. Banerjee for the Defendant vehemently opposed the application on the ground that right to sue does not survive as the suit is instituted in the name of the firm and the deceased Plaintiff no. 2 in the capacity of partner; therefore, there is no question of joining the present Petitioner as a legal representative; it is also irrelevant, therefore, to consider condonation of delay.

The present suit is instituted in the name of the firm which is the Plaintiff no. 1. Plaintiff no. 2 was one of the partners. The present Petitioner is also one of the partners. Therefore, the Petitioner can be impleaded as a partner and he is the liberty to be made a party by filing appropriate application. But he cannot be joined or arrayed as a legal representative of the deceased partner. Since the suit is instituted in the name of the firm, under sub-rule (1) of Rule 4 in Order 30 it is not mandatory to join the legal representative of the deceased partner as a party to the suit. In **Anokhe Lal Appellant V. Radhamohan Bansal and others Respondents (1997 AIR SCW 1)** it was observed by the Supreme Court of India in Para.8:

“8. What sub-rule (1) of Rule 4 in Order 30 of the Code provides is that it is not mandatory to join the legal representative of a deceased partner as a party in the said suit. What sub-rule (2) says, in other words, is that sub-rule (1) is not a hindrance to

any legal representative of a deceased partner to get himself impleaded if he has otherwise any right to do so. It is, therefore, clear that sub-rule (2) does not create any right as such for a legal representative to get impleaded in a suit, but it only operates as an exception to sub-rule (1). At any rate, Rule 4 (2) of Order 30 cannot come into operation in a situation where Order 1 Rule 10 of the Code cannot be invoked.”

The present Petitioner may be nominated to represent the firm among other partners. In such case he will represent the firm as a partner itself. It is one thing to say to step into the shoes of his father, and it is another thing to say to walk on one's own shoes. It is the later part which is applicable here.

Accordingly GA No. 6 of 2023 stands dismissed and disposed of. Affidavit-in-reply kept in record.

Fix the suit on 12th February, 2024 for hearing GA No. 5 of 2023.

(SUGATO MAJUMDAR, J.)